



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 210505-0102]

RIN 0648-BK37

Atlantic Highly Migratory Species; General Category Restricted-Fishing Days

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to set Atlantic bluefin tuna (BFT) General category restricted-fishing days (RFDs) for the 2021 fishing year; clarify the regulations regarding applicability of RFDs to highly migratory species (HMS) Charter/Headboat permitted vessels; and correct references to the Atlantic Tunas General category permit in a section of the Atlantic HMS regulations. This proposed rule would establish RFDs for specific days during the months of July through November 2021. On an RFD, Atlantic Tunas General category permitted vessels may not fish for (including catch-and-release or tag-and-release fishing), possess, retain, land, or sell BFT. On an RFD, HMS Charter/Headboat permitted vessels with a commercial sale endorsement also are subject to these restrictions to preclude commercially for BFT under the General category restrictions and retention limits but may still fish for, possess, retain, or land BFT when fishing recreationally under applicable HMS Angling category rules.

DATES: Written comments must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*. NMFS will hold a public hearing via conference call and webinar for this proposed rule on May 19, 2021, from 3 p.m. to 5

p.m. For webinar registration information, see the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2021-0040, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter “NOAA-NMFS-2021-0040” in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

NMFS will hold a public hearing via conference call/webinar on this proposed rule. For specific location, date and time, see the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of this proposed rule and supporting documents are available from the HMS Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Larry Redd at larry.redd@noaa.gov or 301-427-8503.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., larry.redd@noaa.gov, 301-427-8503, or Sarah McLaughlin, sarah.mclaughlin@noaa.gov, 978-281-9260.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota, recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States, among the various domestic fishing categories per the allocations established in the 2006 Consolidated HMS FMP and its amendments. Section 635.23 specifies the retention limit provisions for Atlantic Tunas General category permitted vessels and HMS Charter/Headboat permitted vessels, including regarding RFDs.

In 2018, NMFS implemented a final rule that established the U.S. BFT quota and subquotas consistent with ICCAT Recommendation 17-06 (83 FR 51391, October 11, 2018). In 2020, following a stock assessment update, ICCAT adopted Recommendation 20-06, which maintained the total allowable catch of 2,350 metric tons (mt) and the associated U.S. quota. As such, as described in § 635.27(a), the current baseline U.S. quota remains 1,247.86 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The baseline quota for the General category is 555.7 mt. Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. Although it is called the “January” subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. The baseline subquotas for each time period are as follows: 29.5 mt for January; 277.9 mt for June through August; 147.3 mt for September; 72.2 mt for

October through November; and 28.9 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods.

Background

An RFD is a day, established ahead of time through a schedule published in the **Federal Register**, on which NMFS sets the BFT retention limit at zero for certain categories of permit holders. Specifically, on an RFD, vessels permitted in the Atlantic Tunas General category are prohibited from fishing for (including catch-and-release and tag-and-release fishing), possessing, retaining, landing, or selling BFT. (§ 635.23(a)(2)). RFDs also apply to HMS Charter/Headboat permitted vessels to preclude fishing commercially under General category restrictions and retention limits on those days but do not preclude such vessels from recreational fishing activity under applicable Angling category regulations, including catch-and-release and tag-and-release fishing (§ 635.23(c)(3)).

NMFS may waive previously scheduled RFDs under certain circumstances. Consistent with § 635.23(a)(4), NMFS may waive an RFD by adjusting the daily BFT retention limit from zero up to five on specified RFDs, after considering the inseason adjustment determination criteria at § 635.27(a)(8). This would include, among other things, review of dealer reports, daily landing trends, and the availability of BFT on fishing grounds. NMFS would announce any such waiver by filing a retention limit adjustment with the Office of the Federal Register for publication. Such adjustments would be effective no less than 3 calendar days after the date of filing for public inspection with the Office of the Federal Register. NMFS also may waive previously designated RFDs effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct catch-and-release or tag-and-release fishing for BFT under § 635.26(a). NMFS would not modify the previously

scheduled RFDs during the fishing year in other ways (such as changing an RFD from one date to another, or adding RFDs).

NMFS originally established regulatory authority to set “no-fishing” days for BFT in the General category fishery in a 1995 rule (60 FR 38505, July 27, 1995). In that 1995 rule, NMFS described “no-fishing” days as an available effort control that could be used to extend the General category time-period subquotas and provide additional inseason management flexibility with regard to quota use and distribution and season length. NMFS renamed “no-fishing” days to be “RFDs” in a 1997 rulemaking, which also included annual BFT quota specifications and effort controls (62 FR 38939, July 21, 1997). From 1995 through 2007, NMFS set RFDs on an annual basis. NMFS has not used such RFDs since 2007.

In 2019 and 2020, NMFS received numerous requests from Atlantic tuna dealers, General category participants, and members of the Atlantic HMS Advisory Panel to resume the use of RFDs. These requests indicated that increasing BFT catch rates in the General category have shortened the time it takes to fill the relevant subquotas, which has resulted in unstable markets. NMFS has also received a number of questions about RFDs and concerns that using them could hinder the market from operating naturally, unnecessarily restrict fishing opportunities during the fishing year, and may negatively affect HMS fishing tournaments for BFT by potentially reducing General category registered tournament participation.

NMFS is proposing to resume the use of RFDs for the 2021 fishing year to prevent recurrence of certain issues that affected the fishery in 2019 and 2020. These issues include the shortened time to fish under the General category subquotas that occurs when quota is filled quickly, increasing numbers of BFT that are landed but cannot be sold by fishermen fishing under the General category quota when there are large volumes of landings in a short period, and the resulting decreasing prices of BFT. NMFS is

proposing an RFD schedule for the 2021 fishing year, balancing these issues with other concerns expressed about RFDs affecting market operations and fishing opportunities noted above. NMFS has existing regulatory authority to annually publish a notice of RFDs and to implement them. § 635.23(a)(2). Given the length of time that has passed since NMFS last implemented RFDs in these fisheries, however, NMFS is also requesting comments on resuming the use of RFDs more generally and on the need for RFDs in the 2021 fishing year.

Proposed RFD Schedule for the 2021 Fishing Year

For 2021, NMFS proposes that persons aboard vessels permitted in the General category would be prohibited from fishing for (including catch-and-release and tag-and-release fishing), possessing, retaining, landing, or selling BFT on the following days: all Tuesdays, Fridays, and Saturdays from July 20, 2021, through November 30, 2021, while the fishery is open. On these designated RFDs, persons aboard HMS Charter/Headboat permitted vessels with a commercial sale endorsement also would be prohibited from fishing commercially for BFT. Persons aboard all HMS Charter/Headboat permitted vessels could fish recreationally for BFT under the applicable Angling category restrictions and retention limits.

NMFS is proposing a schedule of days from July through November based on its review of average daily catch rate data for recent years and a review of past years' RFD schedules and how they worked to extend the use of the General category quota, considering past closure dates. We also considered input from Atlantic tuna dealers, General category participants, and members of the Atlantic HMS Advisory Panel. Considering this information, NMFS believes that this schedule of Tuesday, Friday, and Saturday RFDs should increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the subquota periods (similar to past RFD schedules). It would also allow for two-consecutive-day periods twice each

week (Sunday - Monday; Wednesday - Thursday) for BFT product to move through the market and also allow for some commercial fishing activity each weekend (Sunday).

As described above, based on consideration of regulatory criteria at § 635.27(a)(8), NMFS may waive certain RFDs consistent with § 635.23(a)(4), either by adjusting the retention limit upwards on a previously-scheduled RFD or by waiving an RFD to allow recreational fishing under the Angling category restrictions and retention limits when the General category closes. Once the schedule is set, however, NMFS would not modify RFDs in other ways (*e.g.*, switching days or adding RFDs).

Regulatory Clarification Regarding Applicability of RFDs to HMS

Charter/Headboat Permitted Vessels

Section 635.23(c) specifies the BFT retention limits for HMS Charter/Headboat permitted vessels, including when such vessels with a commercial sale endorsement may fish under either the General category (commercial) or Angling category (recreational) retention limits and restrictions. However, the regulations do not clearly state which retention rules apply to such vessels on an RFD. Rather, the regulations contain various cross-references to establish which retention limit applies to a vessel with an Atlantic HMS Charter/Headboat permit with a commercial endorsement on an RFD. As such, NMFS proposes to make minor changes at § 635.23(c) to explicitly clarify in the regulations that when the General category is closed or on an RFD, Charter/Headboat permitted vessels may only fish under the Angling category limits. NMFS is also proposing to correct two references to “General category Atlantic Tunas” permits in this section to “Atlantic Tunas General category” permits, consistent with the permit title name in other sections of the Atlantic HMS regulations.

Request for Comments

NMFS is requesting comments on an RFD schedule for the 2021 fishing year, proposed under its existing regulatory authority to annually publish a notice of RFDs and

to implement them accordingly given the length of time that has passed since NMFS last implemented RFDs. However, NMFS is also requesting comments on resuming the use of such RFDs more generally and the need for RFDs in the 2021 fishing year. Comments on this proposed rule may be submitted via *www.regulations.gov* or at a public conference call/webinar. NMFS solicits comments on this action by [*insert date 30 days after date of publication in the FEDERAL REGISTER*] (see **DATES** and **ADDRESSES**).

During the comment period, NMFS will hold a public hearing via conference call and webinar for this proposed action. Requests for sign language interpretation or other auxiliary aids should be directed to Larry Redd at *larry.redd@noaa.gov* or 301-427-8503, at least 7 days prior to the meeting.

The webinar/conference call will take place on May 19, 2021. Information for registering and accessing the webinars can be found at *<https://www.fisheries.noaa.gov/action/proposed-rule-implement-general-category-restricted-fishing-days-2021-atlantic-bluefin-tuna>*.

The public is reminded that NMFS expects participants at public webinars/conference calls to conduct themselves appropriately. At the beginning of each webinar/conference call, the moderator will explain how the webinar/conference call will be conducted and how and when participants can provide comments. NMFS representative(s) will structure the webinars/conference calls so that all members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Participants are expected to respect the ground rules, and those that do not may be asked to leave the webinars/conference calls.

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions

of the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Section 603(b)(1) requires agencies to describe the reasons why the action is being considered. The purpose of this proposed rulemaking is, consistent with the objectives of the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law, to potentially set a schedule of RFDs for the 2021 fishing year as an effort to control for the General category quota, and to extend General category fishing opportunities through a greater portion of the General category time-period subquotas than have been available in recent years. Implementation of the proposal would further the management goals and objectives stated in the 2006 Consolidated HMS FMP and its amendments.

Section 603(b)(2) of the RFA requires agencies to state the objectives of, and legal basis for, the proposed action. The objective of this proposed rulemaking is to set a schedule of RFDs for the 2021 fishing year to increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the subquota periods (similar to past RFD schedules). Additionally, this proposed rule would clarify the regulations regarding applicability of RFDs to vessels permitted in the HMS

Charter-Headboat category. The legal basis for the proposed rule is the Magnuson-Stevens Act and ATCA.

Section 603(b)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. The Small Business Administration (SBA) has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210), which includes for-hire (charter/party boat) fishing entities. The SBA has defined a small entity under the scenic and sightseeing transportation (water) sector as one with average annual receipts (revenue) of less than \$8.0 million. Therefore, NMFS considers all HMS permit holders, both commercial and for-hire, to be small entities because they had average annual receipts of less than their respective sector's standard of \$11 million and \$8 million. The 2019 total ex-vessel annual revenue for the BFT fishery was \$9.8 million. Since a small business is defined as having annual receipts not in excess of \$11.0 million, each individual BFT fishing entity would fall within the small business definition. Thus, all of the entities affected by this rule are considered to be small entities for the purposes of the RFA. The numbers of relevant annual Atlantic Tunas or Atlantic HMS permits as of October 2020 are as follows: 2,645 General category permit holders and 3,839 HMS Charter/Headboat permit holders, of which 1,681 hold HMS Charter/Headboat permits with a commercial sale endorsement.

Section 603(b)(4) of the RFA requires agencies to describe any new reporting, record-keeping, and other compliance requirements. This proposed rule does not contain any new collection of information, reporting, or record-keeping requirements. This proposed rule would set a schedule of RFDs for 2021 as an effort control for the General

category quota and would clarify existing regulatory text about the applicability of RFDs to HMS Charter/Headboat permitted vessels.

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed action. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other fishery management measures. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed action has been determined not to duplicate, overlap, or conflict with any Federal rules.

Under section 603(c) of the RFA, agencies must describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Specifically, the RFA (5 U.S.C. 603(c)(1)-(4)) lists four general categories of significant alternatives to assist an agency in the development of significant alternatives. These categories of alternatives are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule, or any part thereof, for small entities.

Regarding the first, second, and fourth categories, NMFS cannot establish differing compliance or reporting requirements for small entities or exempt small entities from coverage of the rule or parts of it, because all of the businesses impacted by this rule are considered small entities, and thus the requirements are already designed for small

entities. Regarding the third category, NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking.

This proposed rule would not change the U.S. Atlantic BFT quotas or implement any new management measures not previously considered under the 2006 Consolidated HMS FMP and its amendments. This proposed rule would instead resume use of RFDs and provide the regulated community the opportunity to comment on this proposal; propose a schedule of RFDs for 2021; clarify existing regulatory text about the applicability of RFDs to HMS Charter/Headboat permitted vessels; and make a minor change to correct two permit title references in a section of the regulations. Under the regulations, when a General category time period subquota is reached or projected to be reached, NMFS closes the General category fishery. Retaining, possessing, or landing BFT under that quota category is prohibited on and after the effective date and time of a closure notice for that category, for the remainder of the fishing year, until the opening of the subsequent quota period or until such date as specified. In recent years, these closures, if needed, have generally occurred toward the end of any particular subquota time period. According to communications with dealers and fishermen, several of the high-volume HMS Atlantic tunas dealers in 2019 and 2020 were limiting their purchases of BFT and buying no or very few BFT (such as harpooned fish only) on certain days during the beginning portion of the June through August subquota time period in order to extend the available quota until later in the subperiod given market considerations. However, while these actions may have prevented large numbers of BFT from entering the market at the same time and may have lengthened the time before any particular subquota was closed, because these actions were not pre-scheduled or consistently implemented across the fishery, there were negative impacts experienced by some General category and Charter/Headboat permitted fishermen, who could not find buyers for their BFT. As a result, a number of BFT that normally would have been sold were

not, and opportunities may not have been equitably distributed among all permitted vessels. Table 1 shows the number and total metric tons (mt) of BFT that were landed but not sold by fishermen fishing under the General category quota for 2017 through 2020. The number and weight of unsold BFT has been increasing since 2017, and increased substantially (from 20 to 173 BFT and 3.8 to 31.4 mt) between 2019 and 2020.

Table 1 -- The Number (count) and Weight (mt) of BFT That Were Landed but Unsold By General Category Participants by Year

Year	Count	Weight (mt)
2017	0	0
2018	14	2.6
2019	20	3.8
2020	173	31.4
Total	207	37.8

In addition to reviewing the data regarding the amount of unsold BFT, NMFS also reviewed the average ex-vessel price. Table 2 shows the average ex-vessel price per pound of BFT during each General category subquota time period for the years 2017 through 2020. On an annual basis, the ex-vessel price tends to be lower for the June through August subquota time period, with an average (2017 through 2020) price of \$6.04, and increases over the summer and fall period (\$6.30 for September period and \$6.49 for the October through November period). NMFS understands that several factors influenced dealers' decisions to not purchase BFT in 2019 (*e.g.*, fish conditions, daily retention limits, and market conditions) and that in 2020, the worsening of global market conditions was an additional factor impacting the number of BFT unsold. These conditions generally occurred in June through August 2019, and were repeated in June through August 2020, with conditions and prices improving by the fall. However, in 2020, the average price per pound was lower for the June through December subquota time periods than in any of the three prior years.

Table 2 -- Average Ex-Vessel Price per Pound (\$) of BFT by General Category**Subquota Time Period (2017-2020)**

Year	Subquota Time period				
	January through March	June through August	September	October through November	December
2017	\$7.37	\$6.72	\$7.08	\$7.56	\$9.83
2018	\$7.43	\$6.92	\$6.55	\$7.58	\$9.56
2019	\$6.06	\$5.61	\$6.36	\$5.53	\$12.25
2020	\$6.13	\$4.91	\$5.21	\$5.30	\$5.76
2017 through 2020 average	\$6.75	\$6.04	\$6.30	\$6.49	\$9.35

To help address these issues, NMFS is proposing to establish a schedule of RFDs for the 2021 fishing year that would regulate specific days on which fishing and sales will not occur. Specifically, the proposed schedule allows for two-consecutive-day periods twice each week for BFT product to move through the market while also allowing some commercial fishing activity to occur each weekend (*i.e.*, Sundays). Because this schedule of RFDs would apply to all participants equally, NMFS anticipates that this schedule would extend fishing opportunities through a greater proportion of the subquota time periods in which they apply by spreading fishing effort out over time. Further, to the extent that the ex-vessel revenue for a BFT sold by a General or HMS Charter/Headboat permitted vessel (with a commercial endorsement) may be higher when a lower volume of domestically-caught BFT is on the market at one time, the use of RFDs may result in some increase in BFT price, and the value of the General category subquotas could increase. Thus, although NMFS anticipates that the same overall amount of the General category quota would be landed as well as the same amount of BFT landed per vessel, there may be some positive impacts to the General category and Charter/Headboat (commercial) BFT fishery. Using RFDs may more equitably distribute opportunities across all permitted vessels for longer durations within the subquota time periods.

If NMFS does not implement a schedule, without any other changes, it is possible that the trends of increasing numbers of unsold BFT (Table 1) and decreasing ex-vessel prices (Table 2) would continue. If these trends continue, all participants could continue to experience negative economic impacts.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: May 6, 2021.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.2, revise the definition of “Restricted-fishing day (RFD)” to read as follows:

§ 635.2 Definitions

* * * * *

Restricted-fishing day (RFD) is a day, beginning at 0000 hours and ending at 2400 hours local time, during which a person aboard a vessel issued:

(1) An Atlantic Tunas General category permit may not fish for, possess, retain, land, or sell a BFT; and

(2) A Charter/Headboat permit with a commercial endorsement may not fish commercially for BFT under the General category rules, but may fish for, possess, retain, or land BFT under the Angling category restrictions and retention limits.

* * * * *

3. In § 635.23, revise paragraphs (a)(1) and (3) and (c)(1) through (3) and add paragraph (c)(4) to read as follows:

§ 635.23 Retention limits for bluefin tuna

* * * * *

(a) * * *

(1) No person aboard a vessel that has an Atlantic Tunas General category permit may possess, retain, land, or sell a BFT in the school, large school, or small medium size class.

* * * * *

(3) Regardless of the length of a trip, no more than a single day's retention limit of large medium or giant BFT may be possessed or retained aboard a vessel that has an Atlantic Tunas General category permit. On days other than RFDs, when the General category is open, no person aboard such vessel may continue to fish, and the vessel must immediately proceed to port, once the applicable limit for large medium or giant BFT is retained.

* * * * *

(c) * * *

(1) When fishing in the Gulf of Mexico, the restrictions and retention limits applicable to the Angling category specified in paragraph (b)(1) of the section apply.

(2) When fishing other than in the Gulf of Mexico when the fishery for the General category is closed or on an RFD, the restrictions and retention limits applicable to the Angling category specified in paragraphs (b)(1) through (3) of this section apply.

(3) When fishing other than in the Gulf of Mexico when the General category fishery is open and not on an RFD, a person aboard a vessel that has been issued an HMS Charter/Headboat permit with a commercial sale endorsement may fish under either the General category restrictions and retention limits as specified in paragraphs (a)(1) through (3) of this section or the Angling category restrictions and retention limits as specified in paragraphs (b)(1) through (3) of this section. The size category of the first BFT retained will determine whether the General category or Angling category restrictions and retention limits apply to the vessel that day.

(4) When fishing other than in the Gulf of Mexico when the General category fishery is open and not on an RFD, a person aboard a vessel that has been issued an HMS Charter/Headboat permit without a commercial sale endorsement permit may only fish for, possess, retain, or land BFT under the Angling category restrictions and retention limits as specified in paragraphs (b)(1) through (3) of this section..

* * * * *